

September 29, 2021

Memorandum 2021-16

Updated Staff Recommendations

At its September 16, 2021, meeting the Committee discussed potential recommendations that would form the basis of its 2021 Annual Report. Following that meeting, staff updated the potential recommendations based on the Committee's discussion and additional research. The attached slide deck presents updated proposals for the Committee's review and discussion at the meeting scheduled for September 30, 2021. At that meeting, staff will present these slides and may also provide other relevant data for the Committee's review as it considers if any of these recommendations should form a part of its 2021 Annual Report.

Respectfully submitted,

Thomas M. Nosewicz
Legal Director

Updated Staff Recommendations September 30, 2021



1. ABOLISH OR LIMIT THREE STRIKES

Potential Recommendations:

1. Abolish the Three Strikes law.

At a minimum:

2. Establish 5 year wash-out period, after which prior offenses can't be counted as strikes.
3. Juvenile conduct can't be counted as a strike.
4. Law does not apply if current offense is not serious or violent.



2. EXPAND CDCR'S EXISTING RESIDENTIAL REENTRY PROGRAMS

Potential Recommendations:

1. Expand the current residential reentry programs so that eventually everyone leaving prison serves up to their final two years there.
2. Allow the Board of Parole Hearings to grant release to a residential reentry program.



3. EXPAND ELIGIBILITY FOR PAROLE RELEASE

Potential Recommendations:

1. Establish parole eligibility for those convicted of all offenses (including violent offenses) after they've served the full term for their primary offense.
 - ☞ Could be accomplished by majority vote, but would not reach certain categories, including third strike sentences and certain gang enhancements.



4. MODERNIZE THE COUNTY PAROLE SYSTEM

Potential Recommendations:

1. Require that all counties review for county parole release everyone sentenced to jail who would be eligible for parole consideration if confined in state prison.
2. Specify that the term of county parole supervision cannot be longer than two years or how long the person would have spent in jail (including credits) — whatever is shorter.
3. Specify that county parole board member appointed by Presiding Judge have professional or lived experience in the areas of social work, substance use disorder treatment, foster care, rehabilitation, community reentry, or the effects of trauma and poverty. (Borrowed from Penal Code § 5075.6).



5. CREATE A REVIEW PROCESS FOR LIFE WITHOUT PAROLE SENTENCES

Data follow-up

- Source: Special Circumstances Conviction Project, UCLA Center for the Study of Women:
 - Survey of 2,437 LWOP cases
 - 7 (of 22) special circumstances have not been used at all
 - 49% of these LWOP sentences are for felony murder
 - No data on % that was principal vs. aider/abettor
 - 78% of those people are people of color
 - 41% are Black
 - 67% were 25 or younger
 - 14% of these LWOP sentences involved gang special circumstances
 - 98% people of color
 - 75% were 25 or younger



5. CREATE A REVIEW PROCESS FOR LIFE WITHOUT PAROLE SENTENCES

Data follow-up

- Current LWOP population:
 - 181 women are serving LWOP sentences (3% of LWOP population).
 - Most (58%) were 26 or older at the time of the offense.
 - For women who were 18–25 at the offense, 39% are white, 25% are Black, 21% are Latinx, and 16% are “other.”
 - Overall LWOP population of women is 44% white, 20% black, 20% Latinx, and 15% “other.”



6. STRENGTHEN ALTERNATIVES TO INCARCERATION

Potential Recommendations:

1. Add a statement to the Penal Code:
 - The disposition of a criminal case shall use the least restrictive means possible, including but not limited to diversion, collaborative courts, deferred entry of judgment, restorative justice, probation, split sentences, or incarceration.
 - Unless otherwise prohibited, in all cases with nonviolent charges, an alternative to incarceration shall be imposed unless incarceration is necessary to prevent physical injury to others or failing to impose incarceration would depreciate the seriousness of the offense. Alternatives to incarceration may also be appropriate in other cases.
2. Revise the mental health diversion law, Penal Code § 1001.36: Presume that when a defendant has a diagnosis for a specified mental disorder, the statutory requirement that the mental disorder “was a significant factor in the commission of the charged offense” is satisfied.



7. ALLOW APPELLATE COURTS TO REDUCE SENTENCES

Potential Recommendations:

1. Allow appellate judges to review sentences for excessiveness on appeal, including adjusting:
 - the base sentence,
 - the consecutive nature of additional sentences, and
 - the application of sentencing enhancements... without giving deference to the decision of the sentencing judge.
2. Allow this power to be exercised on appeal even in cases where the defendant pleaded guilty.



8. ENCOURAGE INCREASED PAROLE GRANTS AND DATA-SHARING

Key parole recommendations from 2020 Committee Report:

- Clarify standard for parole denials: “imminent risk that the parole candidate will commit a serious or violent felony if released.”
- Establish a rebuttable presumption that a candidate is suitable for release in certain circumstances.
 - e.g.: nonviolent offense, connection to mental illness, low-risk on risk assessment, no recent rule violations, positive programming, result of victimization/abuse/trauma.



8. ENCOURAGE INCREASED PAROLE GRANTS AND DATA SHARING

Potential Recommendations:

1. Encourage BPH to increase its parole grant rate to reflect the Legislature's directive that parole shall "normally" be granted by:
 - a. Supporting Penal Code changes as previously recommended by the Committee, and
 - b. Making similar changes to BPH regulations concerning the factors for parole suitability.
2. Recommend that BPH regularly release data relevant to evaluating how the parole suitability process functions.

